

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2742 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRABHUBHAI KALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioners
MR HS MUNSHAW for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/03/2000

ORAL JUDGEMENT

The petitioners herein are the employees of the Gujarat State Land Development Corporation, which is a Government Company registered under the Companies Act, 1956. Petitioner No. 2 was appointed as a watchman on daily wages basis by the Joint Director of Agriculture, Rajkot as per his order dated 1.8.1978. The petitioner's appointment was initially on yearly basis and it came to

be extended every year. Petitioner No. 1 was appointed as Sweeper on daily wages basis by the Joint Director of Agriculture, Rajkot on 24.10.1980 for a period of one year and the said appointment was also extended from time to time on yearly basis. The respondent Corporation came to be established and the employees working on the concerned schemes of the Agricultural Department were transferred on deputation to the respondent Corporation. With passage of time, the employees also came to be absorbed in the services of the respondent Corporation. The respondent Corporation, however, did not pass any orders in respect of the petitioners as they were treated as daily wager employees. In the year 1988, the petitioners filed this petition praying for a writ to direct the respondent Corporation to treat the petitioners as regular employees of the respondent Corporation from the initial date of appointment and to grant the petitioners the time scale of pay and all other benefits of class IV regular employees of the respondents. The petitioners also prayed for a writ to direct the respondents to pay the petitioners difference of wages. The petitioners also prayed for interim relief in para 9 (E) in the following terms :-

"(E) Pending admission and final disposal of this petition be pleased to restrain the respondents from terminating, discharging or discontinuing the services of the petitioners and direct to pay the time scale of pay with all allowances to the petitioners, as Class IV employees of the respondents."

2. On 1.6.1988, this Court issued notice and granted ad-interim relief in terms of para 9(E) and the order issued by this Court restrained the respondent Corporation from terminating, discharging or discontinuing the services of the petitioners and directed to pay the time-scale of pay with all allowances to the petitioners as class IV employees of the respondents till 30.6.1988. The ad-interim relief was thereafter extended from time to time. The petition was admitted on 22.7.1998 and the interim relief was ordered to continue.

3. In response to the notice, affidavit in reply was filed on 4.7.1988 followed by a further affidavit in reply dated 23.2.2000. It is contended by the respondents that the petitioners were daily wager contingency paid employees whose services were on daily wager basis and that their appointments were not made in a regular manner. Reliance is sought to be placed on

certain decisions so also Mr Pathak for the petitioner has sought to place reliance on certain decisions.

It is further contended on behalf of the respondents that there is no sufficient work for the daily wagers at Morbi where the petitioners are presently working. That statement is disputed by Mr Pathak on behalf of the petitioners. However, it is not necessary to go into that controversy in view of the orders which this Court proposes to pass.

4. The fact remains that the petitioners have been in continuous employment of the respondents since last about 20 years. They were appointed in the Directorate of Agriculture which was a part of the State Government service and since the schemes on which the petitioners were working were transferred to the Gujarat State Land Development Corporation, the petitioners also came to be transferred to the Corporation. Considering the fact that the petitioners have already put in 20 years of service and further considering the fact that the interim relief directing the respondent Corporation to pay the petitioners salary in their time scale of pay as class IV employees is also in operation since last 12 years, and that in the normal course 20 years service' would even entitle an employee to opt for voluntary retirement and get pensionary benefits, this Court is not inclined to disturb that position. This, of course, would not mean that the petitioners are required to be continued at the same place even if there may not be adequate work for them. The respondent Corporation has its offices and premises all over the State and since the petitioners are now to be treated as employees of the respondent Corporation in the regular time scale with effect from 1.6.1988, when this Court granted ad-interim relief in their favour, it will be open to the respondent Corporation to avail of the services of the petitioners at any place in the State of Gujarat.

5. The petition is allowed and the respondent Corporation is directed to give the petitioners all the benefits of regular employees with effect from 1.6.1988 without any further liability to pay any further monetary benefit for the period during which the petition was pending before this Court for the last about 12 years.

6. Rule is accordingly made absolute with no order as to costs.

It is clarified that this order may not be treated as precedent as the order is passed in the

peculiar facts and circumstances of the case particularly the facts that the petitioners have completed 20 years service and the ad-interim relief has been operating in favour of the petitioners since 1988. It is also clarified that it is open to the respondent Corporation to take services of the petitioners at any place in Gujarat.

March 3, 2000 (M.S. Shah, J.)
sundar/-